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December 16, 2007

The Honorable Richard Seeborg
United States Magistrate Judge
United States District Court
Northern District of California
San Jose Division
VIA FACSIMILE (408) 535-5354

RE: United States v. DAVID RAY HERNANDEZ, aka "SHAGGY"
No. CR 07-00506-JW, CR 07-00508-JW

Dear Judge Seeborg:

Judge Ware has referred the above case for a criminal settlement conference which is scheduled for Monday, December 17, 2007, at 10:30 a.m.

The defendant is charged in two separate indictments. In CR 07-00506, he is charged, along with Roberto Villarreal, with conspiracy to distribute 5 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B)(viii) and distribution of 5 grams or more of methamphetamine, in violation of 841(b)(1)(B)(viii).

In CR 07-00508, he alone is charged in a one count indictment with distribution of 5 grams or more of methamphetamine, in violation of 841(b)(1)(B)(viii).

Based upon at least one prior felony drug conviction, the Government has filed a penalty enhancement pursuant to Title 21, United States Code, Sections 841(b)(1)(b) and 851. Consequently, the defendant is facing a minimum prison sentence of 10 years and a maximum prison sentence of life; a minimum term of supervised release of 8 years and a maximum of life; and a maximum fine of \$4,000,000.

In fact, the defendant has three prior felony drug convictions which qualify as "controlled substance offenses" pursuant to the Career Offender provisions of U.S.S.G. 4B1.1 and 4B1.2(b):

- on or about 02/02/2000 in San Benito County Superior Court, Docket Number: CR9937444, the defendant was convicted of California Health & Safety Code Section 11378, and was sentenced to 36 months probation, 120 days imprisonment.

- on or about 05/28/2003 in Santa Clara County Superior Court, Docket Number: F9987223, the

defendant was convicted of California Health & Safety Code Section 11377(A), and sentenced to 60 days probation, 60 days imprisonment.

- on or about 01/10/2007 in San Benito County Superior Court, Docket Number: CR0600784, the defendant was convicted of California Health & Safety Code Sections 11378 and 11359, and sentenced to 32 months imprisonment.

Two such convictions render the defendant a "Career Offender". Pursuant to U.S.S.G. 4B1.1(b)(A) his Base Offense Level is 37 and Criminal History Category VI. His U.S.S.G. range, before acceptance of responsibility, is 360-life.

The Government has offered a binding plea to Count One of CR 07-00506, Conspiracy, with a sentence of **120 months imprisonment**, to be followed by the minimum term of supervised release (with conditions to be fixed by the Court), no fine, and a \$100 special assessment.

It should be noted that in each case, the defendant distributed controlled substances to an undercover agent, hand to hand, with no informant involved. Moreover, Roberto Villarreal, in pleading guilty to unrelated firearms charges in case # CR-07-00509, allocuted against the defendant regarding the count upon which the plea offer is based (*"Later that day, a methamphetamine transaction I had previously aided and abetted was completed between a UC and my co-conspirator, David Hernandez, a/k/a Shaggy."*)

If you have any additional questions, please feel free to contact me at (408) 535-5053. Thank you for your time and assistance on this matter.

Very truly yours,

SCOTT N. SCHOOLS
United States Attorney

/S/

THOMAS M. O'CONNELL
Assistant United States Attorney

cc: Jerry Fong, Esq.